

**GOVERNMENTAL ADVISORY COMMITTEE  
TO THE U.S. REPRESENTATIVE TO THE  
NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION**

Honorable Carol M. Browner  
Administrator  
U.S. Environmental Protection Agency  
401 M Street S.W.  
Washington, D.C. 20460

Dear Ms. Browner:

Following is the report of the eighth meeting of the Governmental Advisory Committee to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The Committee met March 5-6, 1998 at San Diego, California, in conjunction with its counterpart National Advisory Committee.

We wish to express our thanks for the participation of Serena Wilson and CEC Acting Executive Director Janine Ferretti at the meeting, and for their ongoing assistance to the committee.

The Committee discussed several topics, including implementation of the Transboundary Environmental Impact Assessment (TEIA) process; CEC program and project planning, including the Trade and Environment agenda and specific current and proposed projects; a few issues related to the North American Fund for Environmental Cooperation; public participation by the CEC; the upcoming annual meeting at Merida, Mexico; a recently concluded conference for U.S.-Mexico border tribes; and administrative issues related to meetings and access to draft negotiating documents. Our report on these discussions follows. The Committee agreed to review the draft U.S. country report provided at the meeting and to provide requested comments as soon as possible.

Transboundary Environmental Impact Assessment (TEIA)

As has been noted earlier, the committee supports implementation of a TEIA process that recognizes and builds on existing mechanisms for state-to state communication and cooperation on transboundary impacts. We also emphasize the importance of early government-to-government consultation on potential projects to try to minimize negative impacts and controversy. The committee believes it is important that the process focus on proposed actions that have significant transboundary impacts, that "significant impacts" needs to be defined early, and that the process must also address mitigation policy issues and processes. Russell Rhoades and I, in our capacities as members of the committee and as members of the Environmental Council of the States (ECOS), will shortly co-sign a letter to other U.S. border state environmental agency heads to solicit their cooperation in documenting existing state processes and issues. Staff will compile this information and provide it to the

U.S. government as soon as possible. Following receipt of this U.S. information, we recommend that the CEC serve as a convener with other border states to identify common ground.

We also urge the governments to address in TEIA the role and possible exemption of border region tribes. We have requested the tribal members of the committee to solicit informally tribal views on TEIA issues and forms of tribal involvement.

#### North American Fund for Environmental Cooperation (NAFEC)

The committee was asked to comment on the appropriateness of focusing NAFEC on annual themes and of retaining the current grant ceiling of \$100,000, recognizing that the Fund has been substantially reduced. The committee endorses focusing NAFEC on a specific theme each year, particularly including trade and environment. The committee also suggests establishing an environmental education theme in lieu of funding the proposed environmental education project by the Secretariat. The committee urges that an NAFEC project solicitation for trade and environment projects provide specific definitions and examples of types of projects being invited to help potential grantees. The committee generally recommends retaining the current \$100,00 grant ceiling to permit funding major projects that may provide substantive support to CEC program objectives. However, the committee does not wish to discourage the award of small grants, and recommends a relatively balanced program as long as NAFEC continues.

#### Trade and Environment

Because the committee has still not seen a proposed list of Trade and Environment projects, we cannot comment in much detail. However, we did discuss ecotourism in the context of a “Green Goods” project and endorse this type of emphasis as addressing both economic and environmental issues and benefit. The committee urges the CEC to conduct an economic benefit analysis of ecotourism.

With respect to work group efforts and resolution of issues between trade and environment ministries, we support the U.S. proposal for maintenance of national environmental expert rosters rather than identification of such experts on case by case basis. We believe that ongoing availability of a broadly based roster of experts will help maintain momentum in resolution of issues.

Given that we now have established a process for confidential review of draft materials and negotiating documents, we request again access to the list of proposed trade and environment projects and to have opportunity to comment.

## Program Planning and Budgeting

The committee has commented on the development of the annual program and budget from the inception of the CEC. During the past four years, we have urged the development of a narrower, more focused program that addresses a limited number of key North American environmental and natural resources priorities and emphasizes the unique role of the CEC in trade and environment. While we have seen a clearer “vision” begin to develop, we have concluded that it is time for the governments and the Secretariat to formulate a multi-year strategic plan, with at least a three-year time frame. We feel that this is now essential to integrate the CEC’s mission, goals, objectives, and work plan, and to ensure that projects are a high priority within that framework. We strongly recommend that the parties formulate a multi-year strategic plan prior to beginning negotiation of a 1999 program.

With respect to specific projects, we believe that the proposed environmental education project is redundant. Although we support its unstated objective to help build capacity in Mexico through environmental education, committee members and others are aware of numerous other organizations and efforts in the U.S. and Mexico, including available educational materials in Spanish, that can meet these objectives. As noted earlier, we recommend possible use of NAFEC grants to help fill any identified environmental education gaps.

Regarding the project on Long Range Transport of Air Pollutants, we continue to recommend that the Secretariat insure much more active involvement of states in the working groups, and that representatives of local governments and tribes be offered an opportunity to participate. The committee offers to comment and to assist with structuring a project to promote effective implementation of the Article 13 report recommendations.

With respect to the Sound Management of Chemicals project, we also reemphasize the need for working with states in completing Phase II of the North American Regional Action Plan (NARAP) for Mercury. We strongly encourage that the parties support a program and budget for the CEC to act as an objective monitor and reporter of each country’s compliance with their NARAP commitments, and a role for the CEC to help identify and leverage funds from international organizations to assist NARAP implementation in Mexico.

Reiterating prior recommendations, we urge consideration of selection of additional important substances that are not on the “dirty dozen” list; the use of multimedia studies of source categories, especially transportation and electricity generating utilities, as cited in the Continental Pollutant Pathways report; and the addition of states to the CEC’s Substance Selection Task Force as critical implementing and technical entities.

Conservation is seen by the committee as a critical area for the CEC and a model for addressing trinational issues. The committee expressed strong support for the CEC’s role in addressing natural resources conservation issues, and its hope that the proposed 1998 budget reduction does not signal any loss of support by the parties for a strong conservation agenda.

We understand that Secretariat staff has developed a “scoping paper” that proposes several facets of a conservation agenda. The committee would appreciate receiving a copy of this paper for review.

We recommend consideration of a possible CEC role regarding endangered species and trade, e.g., spotted owls and timber, Columbia River salmon migrating to and from Canada, and developing the outlines of a treaty to protect flyways for migratory species in all three countries. The committee also endorses the recommendations of the Canadian National Advisory Committee, contained in its February 28, 1998 report, concerning development of a three-stage project on cross-border endangered (“keystone or indicator”) species that builds on domestic efforts in the three countries.

### CEC Role at Local Level

The committee believes that the CEC should be involved in local projects as well as trinationally. However, based on the Article 13-14 experience at Sierra Vista related to the San Pedro River study, it is clear that the CEC needs to demonstrate much more sensitivity to, and to work closely with, local, state and tribal governments in formulating and implementing such local projects. The CEC needs to work with these organizations from the inception of a decision to initiate local projects, including providing advance information and continuing to keep the communities and the governments informed.

Regarding selection of local projects, it is clear that the CEC does not have resources to become involved in many local issues creating a need for criteria to help establish priorities for selection. The committee proposes that selection criteria should require at least that the proposed project is precedent setting; is NAFTA and trade/environment-related; and has clear multinational or binational implications. The committee believes that the proposed salt mining at the San Ignacio lagoon in Baja California, Mexico meets these criteria, and recommends that the Secretariat be permitted to initiate an Article 13 project to address the issues presented. The proposed Mitsubishi salt mining project in San Ignacio lagoon presents issues related to trade, conservation, endangered species, and has multinational as well as trilateral scope given the involvement of a Japanese corporation and the whales migratory pattern. As with the San Pedro River Article 13 project, the committee believes that the CEC can play an important, objective, and independent role and can contribute to a critical public participation process on the proposal.

### **Public Participation**

The committee was asked to provide comments on a draft questionnaire developed by a CEC consultant to help evaluate the effectiveness of various public participation processes sponsored by the CEC. In addition to the questionnaire, the committee is providing comments

on the CEC's overall public participation program, an issue that, like program planning and budgeting, has been a major concern of the committee from the CEC's inception.

We recommend that the proposed questionnaire be revised completely. However, we understand that the questionnaire is to be administered only to about 25 people. Prior to developing a broader-based and more useful survey process, we suggest that the CEC review existing public participation survey instruments, and surveys that have been taken in each country. These should provide very useful information about each country's citizens expectations for information and involvement. A questionnaire should 1) emphasize questions needed for strategic development of a public participation strategy and program, rather than being focused entirely on evaluating prior efforts; 2) use multiple choice questions to the extent possible to reduce the time required to complete it; 3) structure specific questions for each aspect of the public participation program (e.g., public consultations, project development and implementation, Webpage, NAFEC, Articles 13, 14, 15); 4) frame questions that are more sensitive to the public participation and language differences in the three countries, especially Mexico; and 5) in addition to the questions currently listed, ask about CEC feedback on public comments provided and about public awareness of impacts on programs from use of their comments. We also urge that in-depth telephone contacts be made with a sub-set of respondents to ask more narrative and unstructured questions.

We suggest that the CEC work with nongovernmental and state and local organizations, academics, and indigenous communities to obtain perspectives on the essential characteristics of a new CEC public information and involvement program. Finally, we urge that this process result in development of an effective, feasible public participation strategy that relies on technology and materials, and on coordination with national, regional and local organizations in each country to help disseminate information and compile input.

## **Other**

### **Briefings**

In addition to the briefings provided at meetings by U.S. staff and CEC managers, the committee would also appreciate more detailed CEC staff briefings and information on particular CEC projects of interest. The committee will identify these projects well in advance of meetings.

### **Joint Meeting of Advisory Committees**

The committee recommends again the scheduling of a joint meeting of each country's national and governmental advisory committees with the Joint Public Advisory Committee. The committee suggests that this could be convened at the upcoming annual Council session at Merida, Mexico.

### Border Tribal Conference

The committee was briefed on the results of a conference of Native Americans on NAFTA and U.S. Mexico border issues held in San Diego on February 3-5, 1998. The conference resulted from discussions by the Committee regarding the need for the CEC to address North American indigenous peoples issues. When it became clear that the CEC would not mount a significant program, the committee's Designated Federal Officer obtained funds and worked with tribes and other agencies to plan the conference. The conference was attended by representatives from nearly all of the 25 border region tribes, eight U.S. departments and agencies, the International Boundary and Water Commission, and the Border Environment Cooperation Commission. The agenda provided for presentations and panel discussions concerning tribal issues and needs, and governmental programs and resources available to assist the tribes meet infrastructure, environment and natural resources, and economic development priorities. The tribes also discussed planning for a binational conference between indigenous peoples along both sides of the U.S.-Mexico border, and organization of the tribes for coordination with each other and for working with the governments. This conference was monitored by Mel Moon, a member of the committee and a representative of Northwest U.S. Indian tribes, who is working now with other Northwest region tribes on both sides of the U.S.-Canada border to plan for a similar conference in that region.

### Administration

The Committee expresses its thanks for EPA's decision to provide funding for one additional meeting each year. We also appreciate the successful conclusion, although delayed, of internal U.S. government negotiations to permit the committee members to have access to draft U.S. negotiating documents. All committee members have agreed to sign a Confidentiality Agreement and look forward to early involvement in development and review of U.S. policy documents related to the CEC.

We appreciate the opportunity to provide the above advice and information to you and look forward to receiving your response. In addition, on a personal note, I appreciate your recent appointment of me as chair of this committee, and I look forward to assisting this committee maintain its positive and constructive role in helping to protect the North American environment.

Sincerely,

Robert Varney, Chair

## **BACKGROUND INFORMATION-SAN IGNACIO LAGOON SALT PROJECT**

In 1994, the Mexican government and Mitsubishi announced plans to build the world's largest industrial salt evaporation facility at Laguna San Ignacio. The Mexican government and Mitsubishi have been involved in a joint venture (Exportadora de Sal (ESSA) ) in the area since 1954 that currently produces seven million tons of salt annually at a nearby solar production facility at a second lagoon, Guerrero Negro, and development is planned for the third.

Laguna San Ignacio, located on the Pacific Ocean side of the Baja California Peninsula, is a large, undeveloped coastal lagoon and one of three remaining lagoons which form the primary destination for migrating gray whales. San Ignacio also provides habitat for numerous marine and terrestrial plant and animal species, many of which are threatened or endangered. San Ignacio is also part of Latin America's largest Biosphere Reserve, "El Vizcaino", formed by Presidential decree in 1988 to protect gray whales, as well as bighorn sheep habitat, extensive pre-Columbian cave paintings of the Sierra de San Francisco, and portions of the Western Gulf of California shoreline. The gray whale is one of North America's truly shared resources in that it migrates through Mexican, US, and Canadian waters. Other safe harbors these whales have used to give birth have become filled with human activity and noise. Now an expectant mother whale must travel from the Arctic all the way to Baja California to find a quiet and safe lagoon. As gray whale nurseries, lagoons constitute essential habitat. Protected waters of a lagoon are warmer and calmer than the open ocean, increasing the success rate of the whales' delivery and the calves' survival.

The Reserve established a zone in which human activities are extremely limited or prohibited. In the remaining buffer zone, a wider variety of human activities are permitted as long as they conform to Mexico's 1988 General Law of Ecological Balance and Environmental Protection. According to the Statutory Framework of the World Network of biosphere reserves adopted in Seville in 1995 and according to expert interpretation, biosphere reserves have three main purposes: conservation, logistical support and development. In addition, they are normally divided into three zones: a core zone, a buffer zone and a transition zone. The Vizcaino Biosphere Reserve includes a core zone and a buffer zone. Under these provisions, ESSA should have to show that its saltworks project is an integrated conservation and development project which is compatible with the protection of the core of the Biosphere Reserve.

In general, Mexico takes an integrated approach to environmental issues, and a habitat approach to species protection. While the country lists more species as endangered than are listed internationally or in the U.S., there is no specific program for individual species recovery. Mexico's national ecology program of 1984-88 had established a national system of natural protected areas whose purpose is to protect and conserve the country's natural wealth and to support socioeconomic development. This system includes the biosphere reserves which have the purpose to develop activities for protection, conservation, improvement, restoration and management of natural resources. This will take place through research,

teaching, training and participation of the local population. While ESSA's proposed project might arguably involve management of natural resources, it appears very difficult for ESSA to argue that its activities constitute protection, conservation, improvement, or restoration of natural resources. Further, the project will not involve research, teaching, or training, and the only participation of the local population may be through the creation of jobs at the project site. Mexico's 1988 General Law of Ecological Equilibrium and Environmental Protection regarding biosphere reserves requires determination of surface area(s) that protect the core from external impact; in buffer zones, only productive activities started up by the local communities living there at the time the respective decree was issued, or with their participation; activities must consider future ecological programs and must be strictly compatible with the objectives, criteria and sustainable development projects within the respective decree and management program; and no new human settlements can be approved.

SEMARNAP rejected the initial project proposal and called for a new environmental impact statement primarily to address questions related to the whales. SEMARNAP created an international science advisory committee to advise it and ESSA on what to include in the new environmental assessment. In July 1996, the international science advisory committee issued scientific terms of reference ("TORs") for the new environmental impact assessment. Concurrent with the issuance of these terms, INE issued socio-economic TORs which must also be addressed by the assessment. According to environmental groups in the U.S. and Mexico, the TORs do not call for an evaluation of alternative sites for this project, nor do they call for an evaluation of alternative types of activity which might be beneficial for the local economy and be more consistent with the appropriate management of a biosphere reserve. They have also identified other flaws related to cost-benefit analysis and scope of analysis.

While the Mexican government owns 51% of the joint venture, Mitsubishi provides the capital to fund operations and expansion. The Mexican federal government will gain direct revenues from taxes and from its share of profits from the sale of the salt. While some 200 jobs will be created, it is estimated only half will be available to Mexican nationals. None of the salt processing jobs will be in Mexico and there will be no direct or indirect jobs for Mexico from Japan's strategic industries which use salt. The joint venture's position is that low rain fall, high evaporation rates, no vegetation and impermeable soils make San Ignacio ideal for the salt works, and that the activities of an inland salt evaporation facility are unlikely to have any negative impact on whales or other marine life. Also according to ESSA, experience over four decades in Guerrero Negro indicates that the process is environmentally sound and can actually enhance the habitat for local and migratory birds, e.g., the company has contributed to more than a quadrupling of the local osprey population by installing nesting poles and supporting other conservation efforts; and more than 110 species of birds, including such endangered species as the black neck stilt, the peregrine falcon and the great blue heron, have been catalogued on site.

According to current plans, 6,000 gallons of saltwater per second will be pumped out of the



lagoon by a battery of diesel engines. Earthen dikes will contain 116 square miles/120,000 acres of evaporating ponds. In addition, a mile-long pier will be built to transport the salt to ocean-going ships. ESSA has proposed to redesign the project to minimize any interference with the gray whale or with the lagoon ecosystem as a whole: the pumps at the top of the lagoon will be moved 2 kilometers from the lagoon, placing them a full 6 kilometers from the furthest point in the lagoon that a whale has ever been spotted; the evaporation and concentration ponds will be pulled back to a full kilometer from the lagoon; a double dike will be added on the sides of the concentration ponds and the saturated brine storage pond facing the lagoon and El Coyote; there will be no development on the shore itself nor in the lagoon; there will be no dredging in the lagoon and the pumping station will be located over 2 kilometers inland from the lagoon's shore via a narrow channel. ESSA is considering electric pumps and wind power is also a possibility. The pier for loading the salt onto ships will be entirely structural steel with 34 meters between the pilings for whales to pass through, placed over eight feet above the ocean to avoid it being swamped or damaged by high waves, and located about 25 kilometers outside the lagoon, well clear of the majority of whale traffic near the lagoon. A causeway was eliminated from the pier design.

The government is now waiting for ESSA to formally propose a new design and a new environmental impact assessment. Mitsubishi has pledged not to proceed with the project "if [it] causes significant environmental damage." SEMARNAP has asserted its "firm promise" that the salt works "project will only be authorized if it complies with applicable environmental regulations." If the environmental impact statement is approved by INE and construction begins, it will be eight years before any salt is produced. At first, the goal will be one million tons per year, building up to a production capacity of seven million tons per year over 30 years.